incorporating the standards by reference, rather than reprinting the standards in the Code of Federal Regulations, the Commission has forced it to incur either the expense of traveling to Washington, DC. to view the standards at the Commission or the Office of the Federal Register or the $2,000 cost of purchasing the standards from GISB. LNT maintains the $2,000 cost is exorbitant and, therefore, argues the standards are not reasonably available to the class of persons affected by the regulations, contrary to the regulations promulgated by the Office of the Federal Register.[29]

As discussed earlier, section 12 of NTT&AA establishes a government policy under which agencies are to rely upon, and adopt, private sector standards whenever practicable and appropriate. The Freedom of Information Act and implementing regulations establish that the proper method of adopting such copyrighted material is to incorporate it by reference into the agency's regulations. [30] To be eligible for incorporation by reference, the document must be reasonably available to the class of persons affected by the publication. [31] Once adopted, a copy must be provided to the Office of the Federal Register for viewing, and the material must be available and readily obtainable. Neither the statute nor the regulations require that the standards be available at no cost. Indeed, standards incorporated by reference are exempt from the requirement that the agency provide copies of documents according to the agency's fee schedule. [32]

GISB, in fact, is not insisting on payment for the reproduction for regulatory purposes of the business practice standards and the associated datasets (data dictionaries), so small companies or municipalities will have easy access to the standards for purposes of reviewing and responding to pipeline tariff filings. [33] The only material for which GISB has restricted reproduction is the complex and detailed ASC X12 mappings and other computer protocols and examples.

It is common practice for standards organizations to charge for copies of their standards in order to defray the publishing costs as well as some of the administrative, legal, and other costs of developing the standards.[34] The GISB price of $2,000 covers the complete four volume set of documents, running over 2,000 pages, including the provision without charge for one year, of the updates and revisions that are certain to be forthcoming. Determining an appropriate price for such standards is not simply a matter of calculating the direct costs of publishing the standards, but involves consideration of the administrative, legal, and other developmental costs as well as the anticipated number of purchasers. In this case, this determination was made, not by an independent publishing firm, but by those who themselves have to purchase the documents—the GISB membership composed of firms, of varying sizes, from all segments of the industry.[35] The Commission has no basis to disagree with their determination of the price. Even for small pipelines, like LNT, a regulatory cost of $2,000, whether for legal fees or for acquiring standards, is within the normal course of doing business. Moreover, LNT can seek to include the costs of compliance with the GISB standards in future rate proceedings.

The Commission orders: The requests for rehearing are denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27432 Filed 10–24–96; 8:45 am]

BILLING CODE 6717–01–P

[29] 1 CFR 51.7(4).

[30] 5 U.S.C. § 553(a)(1); 1 CFR 51.7(4). *See* 28 U.S.C. § 1498 (government liability for patent and copyright infringement). Other government agencies similarly incorporate private standards by reference. *See, e.g.,* note 11, *supra.*

[31] *See* 5 U.S.C. 553(a)(1); 1 CFR 51.7(4).

[32] 5 U.S.C. 553(a)(3).

[33] Letter of September 12, 1996 from counsel for GISB to the Secretary of the Commission (Docket No. RM96–1–000).

[34] *See* Why There Is a Charge for Standards and Standards Information, American National Standards Institute (explaining why charges need to be assessed for standards even if obtained electronically, with no publishing costs). The document is accessible at ANSI's Internet site, http://www.ansi.org/why__chrg.html.

[35] Although GISB members can receive the four volume set at the member's fee of $1,000, their yearly membership dues of $2,000 help defray the administrative, legal, and other costs of developing the standards. See Gas Industry Standards Board Standards Action Bulletin, September 17, 1996, at 8. The Bulletin is accessible via GISB's Internet site at http://www.NeoSoft.com/~gisb/gisb.htm.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1210

[NHTSA Docket No. 96–007; Notice 2]

RIN 2127–AG20

Operation of Motor Vehicles by Intoxicated Minors

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule implements a new program enacted by the National Highway System Designation (NHS) Act of 1995, which provides for the withholding of Federal-aid highway funds from any State that does not enact and enforce a ''zero tolerance'' law. This final rule clarifies what States must do to avoid the withholding of funds.

DATES: The regulation contained in this final rule becomes effective on November 25, 1996.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

In FHWA: Ms. Mila Plosky, Office of Highway Safety, HHS–20, telephone (202) 366–6902; or Mr. Raymond W. Cuprill, HCC–20, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: The National Highway System Designation (NHS) Act of 1995, Pub. L. 104–59, was signed into law on November 28, 1995. Section 320 of the Act established a new Section 161 of Title 23, United States Code (Section 161), which requires the withholding of certain Federal-aid highway funds from States that do not enact and enforce ''zero tolerance'' laws. As provided in Section 161, these ''zero tolerance'' laws must consider an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State, to be driving while intoxicated or driving under the influence of alcohol.

Section 161 specifically provides that the Secretary must withhold from apportionment a portion of Federal-aid highway funds from any State that does not enact and enforce a conforming ''zero tolerance'' law.

In accordance with Section 161, if a State does not meet the statutory requirements on October 1, 1998, five percent of its FY 1999 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(3) and 104(b)(5)(B) shall be withheld on that date. These sections relate to the National Highway System (NHS), the Surface Transportation Program (STP) and the Interstate System.

If the State does not meet the statutory requirements on October 1, 1999, ten percent of its FY 2000 apportionment will be withheld on that date. Ten percent will continue to be withheld on October 1 of each subsequent fiscal year, if the State does not meet the requirements on those dates.

Notice of Proposed Rulemaking

On March 7, 1996, NHTSA and the FHWA issued a joint notice of proposed rulemaking (NPRM) proposing the criteria States must meet to avoid the withholding of apportionment of Federal-aid highway funds. The agencies explained in the NPRM that Section 161 provides that, to avoid the withholding, a State must enact and enforce:

> a law that considers an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol.

The agencies proposed to require that States must meet the following criteria to avoid the withholding of Federal-aid highway funds:

1. *Under the Age of 21*

The State law must apply to all persons under the age of 21. It will not be sufficient for the State law to apply, for example, only to persons under the age of 18.

2. *Blood Alcohol Concentration of 0.02 Percent*

The State law must set 0.02 percent as the legal limit for blood alcohol concentration. States with laws that set a lower percentage (such as 0.00 percent) as the legal limit would also conform to the Federal requirement. It will not be sufficient for the State law to establish, for example, .04 or .07 percent as the legal limit.

3. *Per Se Law*

The State law must consider individuals under the age of 21 whose blood alcohol concentration exceeds the legal limit while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol.

In other words, the State must establish a ''per se'' law for persons under the age of 21, that makes driving with a BAC that exceeds the legal limit itself an offense for such persons. It will not be sufficient for the State law, for example, to provide that .02 percent establishes prima facie evidence.

4. *Primary Enforcement*

The State must enact and enforce a zero tolerance law that provides for primary enforcement. It will not be sufficient for the State law to provide that enforcement may be accomplished only as a secondary action to some other violation or offense.

Since Section 161 did not explicitly prescribe the penalties that must be imposed on offenders who violate zero tolerance laws, the agencies did not propose to include a penalties criterion in the implementing regulation.

The agencies concluded in the NPRM that, while Congress intended to encourage all States to enact and enforce effective zero tolerance laws, it also intended to provide States with sufficient flexibility so they could develop laws that suit the particular conditions that exist in those States.

General Comments on NPRM

The agencies received 22 comments in response to the NPRM. The commenters included the National Association of Governors' Highway Safety Representatives (NAGHSR), 13 State agencies, Mothers Against Drunk Drivers (the National Office, three State Chapters and a memorandum documenting a meeting held with MADD representatives), Advocates for Highway and Auto Safety, the National Association of Beverage Retailers (NABR) and a concerned individual.

Several commenters objected to the proposed rule based on philosophical, legal or constitutional grounds. Massachusetts objected to the use of sanctions against States. It asserted that the ''Sanctions/withholding of funds [will have an adverse impact on] State entities that are not involved in the purview of the intended remedy (e.g., zero tolerance impacting Federal-aid construction funds).''

The National Association of Beverage Retailers (NABR) opposed the ''arbitrary lowering of the legal BAC, for any age category.'' The NABR asserted that the government ''should program its precious resources in areas that will achieve the greatest results per dollar spent * * * [such as] education, information * * * and consistent and fair law enforcement. * * *''

The State of Oklahoma expressed concern that the Federal requirement would pose ''serious legal dilemmas'' for States that ''already have a per se law applicable to all drivers.''

A concerned individual from the State of Colorado challenged the adoption of zero tolerance laws for persons under the age of 21. The commenter asserted that such laws would violate the 14th amendment guaranteeing equal protection for persons under the age of 21 because they would ''apply two unequal standards to a previously enacted law.'' This commenter also expressed the view that the ''double standard'' that would be created by such zero tolerance laws will create ''continuing disrespect * * * among the youth of this country for the law in general.''

The agencies recognize that the enactment by States of zero tolerance laws and the imposition by the Federal government of sanctions on States that do not enact and enforce such laws may be controversial to some. However, Congress has directed the U.S. Department of Transportation to implement the Section 161 program, under which the Secretary must impose a sanction on any State that does not enact and enforce a conforming zero tolerance law. Since the Section 161 program has been mandated by Congress, the agencies are required to implement this program.

Moreover, the agencies believe this program has the potential to save a significant number of lives and prevent many serious injuries. It has been estimated that, since the enactment of the National Minimum Drinking Age Act in 1984, 8400 lives have been saved and over $1.8 billion in economic costs to our society have been prevented because of this law. As President Clinton stated, in a letter in support of the bill, to Senator Byrd, the bill's sponsor:

> [Zero tolerance] laws work—alcohol-related crashes involving teenage drivers are down as much as 10–20 percent in those states [that have enacted such laws]. If all states had such laws, hundreds more lives could be saved and thousands of injuries could be prevented.

In addition, the agencies disagree that zero tolerance laws will be vulnerable to legal or constitutional challenge. Nearly two-thirds of the States in the nation have already enacted zero tolerance laws, and these laws have consistently held up to challenges on constitutional and other legal grounds.

Comments Concerning the Compliance Criteria

The remaining comments addressed the proposed compliance criteria. As stated above, the proposed criteria provided that conforming zero tolerance laws must: (1) apply to all persons under the age of 21; (2) set 0.02 percent

as the legal limit for blood alcohol concentration; (3) establish .02 as a ''per se'' offense; and (4) provide for primary enforcement. The NPRM did not include a penalties criterion. None of the comments received by the agencies opposed criteria #1–3. These criteria will continue to be included in the regulation.

Three respondents commented on criterion #4. MADD supported the primary enforcement requirement. Although its zero tolerance law currently contains a secondary enforcement provision, the State of Nebraska did not take issue with criterion #4. In fact, the State predicted that its secondary enforcement provision ''will be corrected * * * because it will be recognized by state policy makers as an appropriate and effective change.'' The State of Illinois expressed concern that its law would be considered nonconforming under criterion #4. The agencies have found, however, that Illinois' law qualifies under the primary enforcement criterion. This criterion has been adopted without change.

As noted above, since Section 161 did not explicitly prescribe the penalties that must be imposed on offenders who violate zero tolerance laws, the agencies did not propose to include a penalties criterion in the implementing regulation.

Most of the commenters, including NAGHSR and eleven States, agreed with that portion of the agencies' proposal. Advocates and MADD (both the National Office and the three State Chapters) recommended instead that the agency expand the criteria to include a penalties criterion. Advocates recommended that the zero tolerance criteria should require that States impose a mandatory 30-day licensing sanction for any violation. It asserted that the adoption of this requirement would ''ensure that [the] new [zero tolerance] program can be implemented right from the start in a manner that maximizes its safety benefits to the nation.''

Each of the MADD commenters recommended that the criteria should provide for ''licensing sanctions.'' They did not specify, however, a minimum length of suspension or provide other details concerning the nature of the sanctions. MADD's National Office stated that licensing sanctions are ''the most effective means of deterring drinking and driving by those under the age of 21.''

Neither Advocates nor MADD specifically addressed whether sanctions should be ''hard,'' i.e. prohibiting the availability of restricted, provisional or conditional licenses during the suspension period. Both organizations asserted that the legislative history supports the inclusion of a penalties criterion.

The agencies agree that licensing sanctions are effective. NHTSA is aware of studies that have shown their effectiveness in deterring drinking and driving among the general population. ''Changes in Alcohol-Involved Fatal Crashes Associated With Tougher State Alcohol Legislation,'' DOT HS 807511, July 1989. Other studies suggest that such sanctions would be at least as effective against persons who are less than 21 years of age. ''Lower Legal Blood Alcohol Limits for Younger Drivers,'' Hingson, et al., Public Health Reports, 1994. The agencies also agree that ''zero tolerance'' laws that do not contain licensing sanctions would be far less effective than laws that present young people with the risk of losing their driver's license.

Moreover, the agencies strongly favor mandatory licensing sanctions. In fact, NHTSA's Section 410 drunk driving incentive grant program has required, since its inception, that States include mandatory 30-day hard licensing sanctions in their ''0.02 BAC per se'' laws to qualify for grant funds. In a final rule, published separately in today's Federal Register, NHTSA announces that the Section 410 program will continue to require these sanctions.

After a careful and studied review of both the statute and the legislative history, the agencies have decided to establish an additional criterion requiring appropriate penalties. Specifically, in view of Congress' intent that States enact effective laws that contain appropriate sanctions, the agencies believe it is appropriate to require that States authorize the use of driver licensing suspensions or revocations as sanctions for any violation of a State zero tolerance law. However, the agencies conclude that the statute does not permit the inclusion of a mandatory license sanction requirement for this new ''zero tolerance'' program.

Congress has required mandatory licensing sanctions in some of the programs it has established in recent years. Section 159 of Title 23, United States Code, for example, specifies that States must impose a six month license suspension against all persons who are convicted of drug offenses (or conform to section 159 through other means) to avoid a withholding of Federal-aid construction funds. Section 410 of Title 23, United States Code specifies that States must impose a 90-day license suspension on all first offenders and a one-year license suspension on all repeat offenders to qualify for incentive grant funds based on one of its criteria (expedited driver's license suspension or revocation system).

Neither the statutory language contained in Section 161 nor any of the legislative history concerning the section provide for or otherwise make reference to the inclusion of a mandatory licensing sanction. In a program such as this one, which provides that States that fail to comply are sanctioned (as opposed to a program such as Section 410, which provides simply that States that fail to comply do not receive incentive grants), the agencies consider the absence of an explicit statutory mandate to be an important factor in determining whether Congress intended for mandatory licensing sanctions to be required.

Moreover, the legislative history in both the Senate and the House of Representatives contains various statements that lead to the conclusion that the legislation was not intended to require a mandatory licensing sanction.

Senator Byrd stated in June 1995 that 24 States and the District of Columbia ''have already enacted the zero-tolerance law which is called for in [the] amendment.'' Senator Lautenberg, Congresswoman Morella and President Clinton cited the same number of States.[1]

If the agencies were to require a mandatory 30-day hard license suspension, six of the 24 States that had already enacted zero tolerance laws at the time these statements were being made in Congress would fail to comply on the basis of that requirement. If the agencies were to require a mandatory 30-day license suspension, but permit hardship or restricted licenses, three of those States would fail to comply.

In addition, some of the States specifically mentioned in the legislative history as examples that other States should follow, would fail to comply. For example, Senator Byrd stated:

> In * * * North Carolina * * * which [has] adopted zero tolerance laws, lower blood alcohol limits for minors resulted in a 34 percent decline in nighttime fatal crashes among younger drivers. * * * A 1992 Federal study in Maryland found that car accidents involving drivers under the age of 21 who had been drinking, declined eleven percent after the zero-tolerance law was adopted. Further, there was a 50 percent drop in accidents in areas where the penalties were promoted with a publicity campaign.

[1] A statement from Advocates for Highway and Auto Safety was included in the record, which indicated that, as of April 1994, 26 States and the District of Columbia had zero tolerance (.00, .01 or .02) laws.

Senator Lautenberg, Congresswomen Lowey and Morella, and Advocates for Highway and Auto Safety also cited Maryland and/or North Carolina as examples to follow in their statements in the record.

If the agencies were to require a mandatory 30-day hard license suspension, neither of these two States would comply. Instead, they would be subject to a withholding of funds. Even if States were allowed to issue hardship or restricted licenses during the suspension period, one of these States would still fail to comply. The agencies do not believe this is the result that was intended by Congress.

Congress did intend, however, that States would be required to enact effective laws that contain appropriate sanctions. Senator Byrd stated, when he introduced the legislation in the Senate:

> This amendment sets the right example, and tells our Nation's youth that drinking and driving is wrong; that it is a violation of law; and that it will be appropriately punished *according to the laws of each State.* [emphasis added]

The agencies note that every State that has enacted a ''zero tolerance'' law to date has included license suspensions among their sanctions for a violation. In most of these States, licensing sanctions are mandatory. In other States, they are authorized but are not mandatory (i.e., they may be imposed at the discretion of the court). There are no States in which fines are the only sanctions available.

Accordingly, the agencies will add a fifth criterion. This criterion will not require mandatory licensing sanctions, but will require that the State's law authorizes the use of driver licensing suspensions or revocations as sanctions for any violation of the State zero tolerance law. The agencies conclude this is consistent with Congress' intent to recognize the accomplishments of the States that had already enacted zero tolerance laws, and to encourage other States to enact effective zero tolerance laws that contain appropriate sanctions.

Based on a review of current zero tolerance laws, the agencies are aware of only one State law that will fail to comply with this new criterion. That law does not authorize the use of driver licensing sanctions on first offenders who are between the ages of 18 and 21.

While this regulation requires only that States authorize the use of driver licensing sanctions and does not establish a minimum length of suspension, the agencies strongly encourage the States to enact zero tolerance laws that in fact impose mandatory hard licensing sanctions for a reasonable minimum period of time. Since the introduction of the zero tolerance legislation in Congress, 13 States have enacted zero tolerance laws. Even though the agencies' zero tolerance NPRM did not propose to include any licensing sanction requirement, each of these 13 laws included provisions that authorize the use of licensing sanctions for all zero tolerance offenders.

Moreover, 10 of these States enacted laws that provide for a mandatory 30-day hard license suspension or revocation. These States concluded that a mandatory 30-day hard licensing sanction was the appropriate punishment for zero tolerance offenders and would ensure that their laws will be most effective. The agencies urge the remaining States to consider carefully the seriousness of the drunk driving problem among young people and the tragic loss of young lives that results, as they develop their legislation. In particular, these States are urged to follow the lead set by the ten States mentioned above and to enact the most effective law possible.

In addition, States are reminded that, if they enact zero tolerance laws that require a mandatory 30-day hard license suspension, they may become eligible for Section 410 incentive grant funds.

Other Proposed Provisions

The agencies also proposed in the NPRM to include provisions in the regulation governing the submission of certifications to demonstrate State compliance, notifications from the agencies regarding State compliance or noncompliance, and the period of availability of funds that are withheld. The NPRM proposed to include these provisions in sections 1210.5 through 1210.10 of the regulation. A more detailed discussion of these proposed sections can be found in the preamble to the NPRM. 61 FR 9122.

Washington State requested the opportunity to submit its certification for review by July 1, 1996, and receive a determination prior to November 1, 1996. The agencies would be pleased to review a certification from any State in advance of the deadlines established in the regulation.

The agencies received no other comments concerning these sections of the proposed rule. They are being adopted without change.

Separate Final Rule in Today's Federal Register

In today's Federal Register, NHTSA has also published a separate final rule, relating to Part 1313, the agency's regulation that implements its Section 410 program.

On March 7, 1996, NHTSA published an interim final rule in the Federal Register, amending Part 1313 to reflect changes that were made to 23 U.S.C. 410 by the NHS Act, and requesting comments on these changes. In the interim final rule, NHTSA recognized that one of the grant criteria under the section 410 program, which requires that States ''deem persons under age 21 who operate a motor vehicle with a BAC of 0.02 or greater to be driving while intoxicated,'' is similar to the new ''zero tolerance'' sanction requirement contained in Section 320 of the NHS Act (23 U.S.C. Section 161). The interim final rule requested comments regarding whether additional changes should be made to the section 410 ''0.02'' grant criterion, as a result of the new ''zero tolerance'' sanction program.

The final rule, published separately in today's Federal Register, announces that NHTSA will make no changes to the section 410 ''0.02'' grant criterion. This grant criterion will continue to require that States provide for a mandatory 30-day hard suspension.

Regulatory Analyses and Notices

Executive Order 12778 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. States can choose to enact and enforce a zero tolerance law, in conformance with Public Law 104–59, and thereby avoid the withholding of Federal-aid highway funds. While specific criteria that State laws must meet have been established in this final rule, they are mandated by Public Law 104–59. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. Based on the evaluation, we

certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The requirements in this final rule that States certify that they conform to the statutory requirements to avoid the withholding of Federal-aid highway funds are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. The reporting and recordkeeping requirement associated with this rule is subject to approval by the Office of Management and Budget in accordance with 44 U.S.C. Chapter 35. These reporting requirements will occur only once for each State and will record only if the State's law changes.

Accordingly, these requirements have been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements have been approved until September 30, 1999, under OMB No. 2127–0582.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that it will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1210

Alcohol and abuse, Grant programs—transportation, Highway safety, Reporting and recordkeeping requirements, Youth.

In accordance with the foregoing, a new Part 1210 is added to Title 23 of the Code of Federal Regulations to read as follows:

PART 1210—OPERATION OF MOTOR VEHICLES BY INTOXICATED MINORS

Sec.

Authority: 23 U.S.C. 161; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1210.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 161, which encourages States to enact and enforce zero tolerance laws.

§ 1210.2 Purpose.

The purpose of this part is to specify the steps that States must take to avoid the withholding of Federal-aid highway funds for noncompliance with 23 U.S.C. 161.

§ 1210.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *BAC* means either blood or breath alcohol concentration.

(c) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

§ 1210.4 Adoption of zero tolerance law.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3) and 104(b)(5) of title 23, United States Code, on the first day of fiscal year 1999 if the State does not meet the requirements of this part on that date.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3) and 104(b)(5) of title 23, United States Code, on the first day of fiscal year 2000 and any subsequent fiscal year if the State does not meet the requirements of this part on that date.

(c) A State meets the requirements of this section if the State has enacted and is enforcing a law that considers an individual under the age of 21 who has a BAC of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol. The law must:

(1) Apply to all individuals under the age of 21;

(2) Set a BAC of not higher than 0.02 percent as the legal limit;

(3) Make operating a motor vehicle by an individual under age 21 above the legal limit a per se offense;

(4) Provide for primary enforcement; and

(5) Provide that license suspensions or revocations are authorized for any violation of the State zero tolerance law.

§ 1210.5 Certification requirements.

(a) Until a State has been determined to be in compliance with the requirements of 23 U.S.C. 161, to avoid the withholding of funds in any fiscal year, beginning with FY 1999, the State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets the requirements of 23 U.S.C. 161, and this part.

(b) The certification shall contain:

(1) A copy of the State zero tolerance law, regulation, or binding policy directive implementing or interpreting such law or regulation, that conforms to 23 U.S.C. 161 and § 1210.4(c); and

(2) A statement by an appropriate State official, that the State has enacted and is enforcing a conforming zero tolerance law. The certifying statement shall be worded as follows:

I, (Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a zero tolerance law that conforms to the requirements of 23 U.S.C. 161 and 23 CFR 1210.4(c).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications he or she receives to appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 161, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's zero tolerance legislation changes.

§ 1210.6 Period of availability of withheld funds.

(a) Funds withheld under § 1210.4 from apportionment to any State on or before September 30, 2000, will remain available for apportionment until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1210.4 from apportionment to any State after September 30, 2000 will not be available for apportionment to the State.

§ 1210.7 Apportionment of withheld funds after compliance.

Funds withheld from a State from apportionment under § 1210.4, which remain available for apportionment under § 1210.6(a), will be made available to the State if it conforms to the requirements of §§ 1210.4 and 1210.5 before the last day of the period of availability as defined in § 1210.6(a).

§ 1210.8 Period of availability of subsequently apportioned funds.

Funds apportioned pursuant to § 1210.7 will remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are apportioned.

§ 1210.9 Effect of noncompliance.

If a State has not met the requirements of 23 U.S.C. 161 and this part at the end of the period for which funds withheld under § 1210.4 are available for apportionment to a State under § 1210.6, then such funds shall lapse.

§ 1210.10 Procedures affecting states in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 161 and this part, based on NHTSA's and FHWA's preliminary review of its law, will be advised of the funds expected to be withheld under § 1210.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 161 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 161 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1210.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: October 21, 1996.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 96–27313 Filed 10–22–96; 12:30 pm]

BILLING CODE 4910–59–P

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. 89–02; Notice 9]

RIN 2127–AD01

Incentive Grant Criteria for Drunk Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces that the changes that were made in an interim final rule to the agency's regulations to implement the agency's drunk driving prevention incentive grant program, under 23 U.S.C. 410, will remain in effect. In addition, this final rule amends the regulation by simplifying the application process for subsequent year Section 410 grants.

DATES: This final rule becomes effective October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Marlene Markison, Chief, Program Support Staff, NSC–10, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, DC 20590; telephone (202) 366–2121 or Ms. Heidi L. Coleman, Assistant Chief Counsel for General Law, Office of Chief Counsel, NCC–30, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590, telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: Section 410, title 23, United States Code, as amended, established an incentive grant program under which States may qualify for basic and supplemental grant funds for adopting and implementing comprehensive drunk driving prevention programs that meet specified statutory criteria.

On November 28, 1995, the National Highway System Designation Act of 1995 (NHS Act) was enacted into law. Section 324 of the NHS Act contained amendments to 23 U.S.C. 410.

Interim Final Rule

On March 7, 1996, NHTSA published in the Federal Register an interim final rule to implement these changes and requested comments from the public. The changes affected two of the section 410 incentive grant criteria: the statewide program for stopping motor vehicles and the 0.02 blood alcohol concentration (BAC) per se law for persons under age 21.

General Comments on Interim Final Rule

The agency received eleven comments in response to the interim final rule. Comments were received from the National Association of Governors' Highway Safety Representatives (NAGHSR), Advocates for Highway and Auto Safety (Advocates), the National Transportation Safety Board (NTSB), and eight State agencies. The comments, and the agency's responses to them, are discussed in detail below. (The agency also received some comments to Docket No. 96–007, Notice 1, concerning a notice of proposed rulemaking on a new zero tolerance program, which related to the interim final rule. These comments have also been considered by the agency.)

Statewide Program for Stopping Motor Vehicles

Before its amendment by the NHS Act, Section 410 contained a basic grant criterion requiring that States must provide for ''a statewide program for stopping motor vehicles.'' To qualify for a basic grant under this criterion, States were required to provide:

> A statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while under the influence of alcohol.

On June 30, 1992, NHTSA issued an interim final rule to implement this provision. The preamble to the interim final rule stated:

> NHTSA is aware * * * that the courts in some States have declared the use of checkpoints or roadblocks to be unconstitutional under their State constitution [and has, therefore, * * *] attempted in this final rule to provide some flexibility to enable these States to describe other Statewide programs for stopping motor vehicles, using alternative methods * * *
>
> The agency[, however,] expects most States will meet this criterion by describing their plans for conducting a Statewide checkpoint or roadblock program.

Section 324(b)(1) of the NHS Act amended Section 410 by providing an alternative method of demonstrating compliance with this Section 410 basic grant criterion, for those States in which checkpoints or roadblocks have been declared to be unconstitutional. Section 324(b)(1) provides: